

1978 WL 35026 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1978

*1 Joseph M. McCulloch, Jr., Esquire
South Carolina Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Mr. McCulloch:

In a recent letter to this Office you asked the following question:

May a landowner retain private counsel to act as prosecutor for cases involving criminal wildlife violations?

In your letter you state that the cases involve arrests made by individuals holding a state wildlife commission. I assume that there are no problems with the arrest per se or the authority to make it. Also, please note that the response from this Office is structured as to the authority of game wardens. I have noted that pursuant to [Section 50-3-120, Code of Laws of South Carolina](#), 1976 all law enforcement personnel of the wildlife and Marine Resources Department are granted that power and authority possessed by game wardens.

Duly commissioned game wardens occupy positions similar to those of highway patrolmen in this State. [Wyndham v. U.S.](#), 197 F. Supp. 856 (1961). These officers are authorized pursuant to [Section 50-3-390 of the 1976 Code of Laws](#) to ‘. . . see that the bird, nonmigratory fish and game laws are enforced and prosecute all persons having in their possession any birds, nonmigratory fish or game contrary to the bird, fish, and game laws of this State.’ Similarly, a state highway patrolman is authorized pursuant to [Section 23-5-40 of the 1976 Code of Laws](#) to ‘. . . patrol the highways of the State for the purpose of enforcing the laws of the State relative to highway traffic and motor vehicles.’

In the case of [State v. Messervy](#), 258 S.C. 110, 187 S.E.2d 524 (1972) the South Carolina Supreme Court recognized the practice in this State of the arresting highway patrolman prosecuting the case he has made. Based on the rationale of the Court in [Messervy](#) and in light of [Section 50-3-390](#), *supra*, it can be stated that game wardens also have the authority to prosecute cases made by them. Therefore, when a game warden prosecutes a case in magistrate's court he is serving as the prosecuting attorney.

‘In most jurisdictions, as was true at common law, private counsel employed by the complaining witness or by other persons desirous of a conviction are permitted to assist the prosecuting attorney in the conduct of the prosecution, and, as a general rule, no valid objection can be raised by the accused to allowing the prosecuting attorney to have the assistance of private members of the bar. . . . As a general rule, it is necessary, in order to permit private counsel to assist in the prosecution of a criminal case, that his appearance be made with the consent of the prosecuting attorney and the court.’ 63 Am. Jur.2d, Prosecuting Attorneys, Section 9.

Therefore, it is the opinion of this Office that private legal counsel may be retained to assist the arresting officer in the prosecution of a case involving criminal wildlife violations if the permission of the arresting officer and the Court is first obtained.

*2 With best wishes, I am
Very truly yours,

Charles H. Richardson
Assistant Attorney General

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